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**BEFORE THE NEW MEXICO STATE ENGINEER**

**IN THE MATTER OF APPLICATION NOS. )  
3038-ENLGD-2 AND H-272-S-9, H-272-S-11, )  
3038 & 3038-ACCRUE, FILED BY THE )  
VILLAGE OF RUIDOSO )**

**Hearing Nos. 00-041 and  
02-069 Consolidated**

OFFICE OF THE  
STATE ENGINEER  
HEARINGS UNIT  
SANTA FE, NM

**REPORT AND RECOMMENDATION OF THE HEARING EXAMINER**

This matter came on for hearing before Victor Kovach, the State Engineer's designated Hearing Examiner, on February 14 through 17, 2005, in Roswell, New Mexico. The parties appeared as follows: A. J. Olsen, Esq., and Alvin F. Jones, Esq., represented the Applicant Village of Ruidoso; Kelly Mack Cassels, Esq., and Alletta D. Belin, Esq., represented the Protestant Ford Secure Trust; and, Stacey Goodwin, Esq., represented the Water Rights Division (WRD) of the Office of the State Engineer (OSE). Orlando S. Gutierrez, Sr., Protestant to Application No. 3038-Enlgd-2, appeared *pro se*. Having considered the evidence and pleadings submitted in this matter, the Hearing Examiner recommends the following findings and order.

**FINDINGS OF FACT**

1. The State Engineer has jurisdiction of the parties and subject matter.
2. The Village of Ruidoso (hereinafter "Village") filed Application Nos. 3038-Enlgd-2 and H-272-S-9, H-272-S-11, 3038 and 3038 Accrue with the State Engineer which were referred and docketed for hearing as Hearing Nos. 00-041 and 02-069, respectively. The Applications were consolidated for purposes of hearing by order entered on March 8, 2004, along with four other Applications numbered 01679-A & H-465-B into 0275-A & H-272 et al., (docketed as Hearing No. 02-038), 3871 & H-272 et al., Accrue (docketed as Hearing No. 02-068), H-300, H-272-S-9, H-272-S-11, 3871 & H-272 et al., Combined (docketed as Hearing No. 02-070) and 3871, 3038 & 0275-A(A) et al., (docketed as Hearing No. 04-019). Application Nos. 01679-A & H-465-B into 0275-A & H-272 et al.; 3871 & H-272 et al., Accrue; H-300, H-272-S-9, H-272-S-11, 3871 & H-272 et al., Combined; and 3871, 3038 & 0275-A(A) et al., are addressed in a separate report and recommendation specific to Hearing Nos. 02-038, 02-068, 02-070 and 04-019.

3. The Applications docketed under Hearing Nos. 02-069 and 00-041 concern requests to divert water from the Rio Ruidoso, in an amount equal to the treated effluent discharged into the Rio Ruidoso attributable to the Village's diversions of water from the Eagle Creek drainage basin, for municipal use, as follows:

- a. On November 6, 2001, the Village filed Application No. H-272-S-9, H-272-S-11, 3038 and 3038-Accrue, with the State Engineer for Permit to add two additional supplemental wells, H-272-S-9 and H-272-S-11, to divert, on an instantaneous basis, water equal to the amount of treated effluent discharged into the Rio Ruidoso which is attributable to water diverted from surface and supplemental groundwater diversions in the Eagle Creek drainage basin for municipal use by the Village, as previously permitted under Permit No. 3038. The proposed supplemental wells are located in Township 11 South, Range 13 East, NMPM, at points further described as follows:

<u>Well No.</u>	<u>Subdivision</u>	<u>Section</u>
H-272-S-9	NW ¼ NE ¼ NE ¼	23
H-272-S-11	NW ¼ NE ¼ SE ¼	25

The Application also seeks to use well H-272-S-11, as a supplemental well for recovery of accrued credit water previously permitted under Permit 3038-Accrue.

- b. On October 22, 1999 and again on November 26, 2002, the Village filed Application No. 3038-Enlgd-2, with the State Engineer for Permit to divert, on an instantaneous basis, up to 1,000.0 afy of surface and supplemental groundwater from the Rio Ruidoso and supplemental wells, in an amount that is equivalent to the amount of effluent discharge to the Rio Ruidoso that is attributable to groundwater diversions from Wells H-1979 et al., through H-1982 located in the Eagle Creek drainage basin, at points described relative to the NMPM, as follows:

<u>Well No.</u>	<u>Subdivision</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
H-1979	NE ¼ NE ¼ NW ¼	26	10 South	12 East

H-1979-S	SW ¼	34	10 South	13 East
H-1979-S-2	NW ¼ SE ¼	33	10 South	13 East
H-1979-S-3	SW ¼ NE ¼	33	10 South	13 East
H-1979-S-7	SW ¼ NE ¼ SW ¼	34	10 South	13 East
H-1980	SW ¼ NE ¼ NW ¼	26	10 South	12 East
H-1981	SE ¼ NE ¼ NW ¼	36	10 South	12 East
H-1982	NE ¼ SE ¼ NW ¼	36	10 South	12 East

The locations for wells H-1979, H-1980, H-1981 and H-1982 are given based on projected sections. The proposed diversion of effluent credit water would be from surface water diversion points 0275 and 0275-A, located on the Rio Ruidoso in the NE ¼ SW ¼ and SW ¼ SW ¼, both in Section 19, Township 11 South, Range 13 East, NMPM, and from existing municipal wells H-272 through H-272-S-8, located within the Village limits and within Township 11 South, Range 13 East, NMPM, at points further described as follows:

<u>Well No.</u>	<u>Subdivision</u>	<u>Section</u>
H-272	NW ¼ NE ¼ SW ¼	36
H-272-S	SE ¼ SW ¼ NE ¼	25
H-272-S-2	SW ¼ SW ¼ NE ¼	2
H-272-S-3	SW ¼ NE ¼ SE ¼	2
H-272-S-4	NW ¼ NE ¼	11
H-272-S-5	NE ¼ NW ¼ SW ¼	14
H-272-S-6	NW ¼ NE ¼ NE ¼	15
H-272-S-7	SW ¼ NE ¼ SE ¼	10
H-272-S-8	SE ¼ NW ¼ SW ¼	14

4. Legal Notices of the Applications referenced in Finding 3 were duly published. The Ford Secure Trust filed timely protests, objecting to the granting of both Applications. Orlando S. Gutierrez, Sr., filed a timely protest objecting to the granting of Application No. 3038-Enlgd-2.
5. The rights under Permit 3038 were adjudicated in Chaves County District Court Cause No. 20294 and 22600, Consolidated, Rio Hondo Section, Rio Ruidoso Sub-

section, Sub-file No. R-130, signed on December 9, 1975. The Order allows the Village to divert water from the Rio Ruidoso in an amount equal to the sewage effluent discharged to the Rio Ruidoso from surface water diverted from Eagle Creek under State Engineer File Nos. 0173 and 782, on an instantaneous (daily) basis, provided that certain minimum flow conditions exist in the Rio Ruidoso. The permitted points of diversion for recovery for the sewage effluent credit are the Village surface diversion points on the north bank of the Rio Ruidoso, described in File Nos. 0275-A, 01316, 01318, 01321, and Well No. H-300, located within 40 feet of the Rio Ruidoso near the Village's surface diversion points. The Order directs that the contribution of sewage effluent to the Rio Ruidoso from Eagle Creek surface water shall be computed from the following relationship:

$$Re = \frac{De}{Dt} \times Rt, \text{ where}$$

Re = sewage effluent from Eagle Creek water, gpm (gallons per minute)

Rt = total sewage effluent from the Town of Ruidoso sewage treatment plant to Rio Ruidoso, gpm

De = diversion of Eagle Creek water to the municipal distribution system of the Town of Ruidoso, gpm

Dt = total diversion of water to the municipal distribution system, gpm

6. Village Wells H-272 thru H-272-S-5 were approved as supplemental points of diversion for the Eagle Creek sewage effluent credit water by State Engineer actions of August 13, 1971 (H-272), May 26, 1981 (H-272-S) and January 7, 1983 (H-272-S-2 thru H-272-S-5).
7. On April 19, 1982, the Village filed Application for a Permit to change the point of discharge for all of its sewage effluent water to a point approximately six miles downstream on the Rio Ruidoso from the then existing point of discharge, by constructing a new sewage treatment plant. The application was protested and the matter went to hearing.

8. On February 3, 1984, State Engineer, S. E. Reynolds, adopted the Report and Recommendation of the Hearing Examiner and approved the Application referenced in Finding 7, subject to conditions that include flow requirements to protect existing water users within the six-mile reach of the Rio Ruidoso between the old and new sewage treatment plant, as follows:
  - A. From August 1 through April 30th, the Village may take sewage effluent credit water from the Rio Ruidoso at its authorized surface diversion point or wells H-300, H-272, H-272-S, H-272-S-2, H-272-S-3, H-272-S-4 and H-272-S-5 in exchange for surface water it diverts from Eagle Creek into its municipal water distribution system at a rate equal to the rate at which Eagle Creek water is contributing to the flow from the Village of Ruidoso sewage treatment Plant to the Rio Ruidoso.
  - B. From May 1 through July 31, the Village may take sewage effluent credit water from the Rio Ruidoso at its authorized surface diversion point and wells H-300 and H-272-S only at those times when the instantaneous flow in the Rio Ruidoso at the Hollywood gage exceeds six (6) cfs. When the instantaneous flow in the Rio Ruidoso at the Hollywood gage is six (6) cfs or less during the months of May, June and July the Village may take sewage effluent credit water only through the use of wells H-272, H-272-S-2, H-272-S-3, H-272-S-4 and H-272-S-5. The State Engineer expressly retained jurisdiction to re-evaluate the minimum instantaneous flow requirement at the Hollywood gage.
9. In June, August and October of 1990, the State Engineer approved the use of Well Nos. H-272-S-6, H-272-S-7 and H-272-S-8, respectively, as supplemental points of diversion of Eagle Creek sewage effluent credit water.
10. Well Nos. H-1497 and H-1497-S, located within the Eagle Creek drainage basin, were approved by Permit 0173 & 783, 1497 on April 8, 1996. Wells H-1497 and H-1497-S were determined supplemental to the Village's Eagle Creek surface diversion 0173 and 783 and therefore subject to conditions for exchange of effluent

water under Permit 3038.

11. The State Engineer issued Permit 3038-Accrue on February 23, 2001, authorizing the Village to accrue previously authorized sewage effluent credit water under File No. 3038, that it was not able to divert on an instantaneous basis, and to divert said accrued credits from its authorized surface water diversion points and from wells H-272-S and H-300 subject to the following minimum flow requirements:
  - A. From May through October, the Village may take accrued sewage effluent credit water from the Rio Ruidoso at its authorized surface water diversion points and wells H-300 and H-272-S only at times when the instantaneous flow in the Rio Ruidoso at the Hollywood gage exceeds six (6) cfs. The Village may not take accrued sewage effluent credit water from any source when the instantaneous flow in the Rio Ruidoso at the Hollywood gage is six (6) cfs or less.
  - B. From November through April, the Village may take accrued sewage effluent credit water from the Rio Ruidoso at its authorized surface water diversion points and wells H-300 and H-272-S only at times when the instantaneous flow in the Rio Ruidoso at the Hollywood gage exceeds four (4) cfs. The Village may not take accrued sewage effluent credit water from any source when the instantaneous flow in the Rio Ruidoso at the Hollywood gage is four (4) cfs or less.
12. By the subject Application No. H-272-S-9, H-272-S-11, 3038 and 3038-Accrue, the Village seeks to add Well Nos. H-272-S-9 and H-272-S-11 as supplemental points of diversion, on an instantaneous basis, for sewage effluent credit water attributable to its Eagle Creek surface and supplemental groundwater diversions, as presently permitted under Permit 3038, and to add Well No. H-272-S-11 as a supplemental well to divert accrued sewage effluent credit water, not diverted on an instantaneous basis, as presently permitted under Permit 3038-Accrue.
13. On May 24, 2001, Well H-272-S-11 was approved for a diversion of up to 293.78 afy, supplemental to wells H-272 through H-272-S-8. On December 30, 2003, Well H-272-S-9 was approved for a diversion of up to 322.5 afy supplemental to wells H-

272 through H-272-S-8 and H-272-S-10. The Conditions of Approval for both Applications reflect that diversions for purposes of recovering sewage effluent credit water under OSE File No. 3038 was not authorized, but the State Engineer retained jurisdiction specifically to allow for further review in this regard.

14. The Village of Ruidoso discharges the effluent for which it currently receives credit under Permit No. 3038 and Permit No. 3038-Accrue directly to the Rio Ruidoso.
15. WRD's expert hydrologists and water right administrators have determined that additional points of diversion for the taking of sewage effluent credit water under Application No. H-272-S-9, H-272-S-11, 3038 and 3038-Accrue, should be limited to those points of diversion that have an immediate and direct effect on the surface flows in the Rio Ruidoso as opposed to effects on aquifer storage.
16. Authorization of a diversion of effluent credits from a well that does not have a direct and immediate effect to the surface waters of the Rio Ruidoso would result in new depletions of groundwater in the Hondo Underground Water Basin.
17. Simulations performed by WRD's hydrology experts reflect that the proposed diversions from Well No. H-272-S-9 under Application No. H-272-S-9, H-272-S-11, 3038 and 3038-Accrue will have delayed effects on stream depletions with a moderate component of the diversion derived from aquifer storage. Well No. H-272-S-9 cannot be authorized to divert sewage effluent credit as proposed, because such diversions would result in new depletions of groundwater in the Hondo Underground Water Basin.
18. Simulations performed by WRD's hydrology experts reflect that the diversions from proposed from Well No. H-272-S-11 under Application No. H-272-S-9, H-272-S-11, 3038 and 3038-Accrue will have an immediate and direct effect on the Rio Ruidoso with an insignificant component of the proposed diversions coming from aquifer storage.
19. Approval of Well H-272-S-11 as a point of diversion to divert sewage effluent credit water on a daily basis, supplemental to points of diversion presently permitted under OSE File No. 3038, and as a point of diversion to divert accrued effluent credit water, supplemental to points of diversion presently permitted under OSE File No.

3038-Accrue, subject to conditions, would not impair existing water rights, would not be contrary to the conservation of water within the state and would not be detrimental to the public welfare of the state of New Mexico.

20. By Application No. 3038-Enlarged-2 the Village seeks to obtain credit for water that is discharged to the Rio Ruidoso as sewage effluent that is attributable to diversions of groundwater from eight (8) Village wells (H-1979, H-1979-S, H-1979-S-2, H-1979-S-3, H-1979-S-7, H-1980, H-1981 and H-1982) located in the Eagle Creek drainage basin and to divert said credit on an instantaneous (daily) basis from existing surface and groundwater points of diversion within the Rio Ruidoso drainage basin identified in Finding 3b.
21. Emergency Authorization 3038-Enlarged-2 was approved by the State Engineer on July 19, 2004, with points of diversion for sewage effluent credit limited to the Village's surface water points of diversion on the Rio Ruidoso, OSE File Nos. 0275 and 0275-A. Conditions of Approval include minimum flow requirements, daily recording and monthly reporting requirements.
22. The State Engineer extended the boundaries of the Hondo Underground Water Basin to include the area along the North Fork of Eagle Creek on December 28, 1984.
23. The Village filed Declarations of Ownership of Underground Water Rights with the State Engineer on May 23, 1985, for Well Nos. H-1979, H-1980, H-1981 and H-1982, drilled beginning in August 1984 on United States Forest Service land on the North Fork of Eagle Creek.
24. On November 12, 1986, the Fifth Judicial District Court in *State ex rel. State Engineer et al. v. Lewis*, being the general adjudication of all water rights of the Pecos River Stream System, Cause Nos. 20294 and 22600 Consolidated, Rio Hondo Section, Rio Ruidoso Sub-Section, entered Sub-File Order R. 203 adjudicating the Village's right to divert underground waters of the Hondo Underground Water Basin from its North Fork wells located within the Eagle Creek drainage basin, as follows:



<u>Well No.</u>	<u>Amount</u>	<u>Priority</u>
H-1979	up to 1,065 afy	10/13/84
H-1980	up to 920 afy	11/15/84
H-1981	up to 2,442 afy	09/23/84
H-1982	up to 1,221 afy	11/17/84

The Sub-File Order reflects that the priority dates are interim dates, subject to being fully adjudicated upon entry of the court's final decree or to facilitate a priority call made against the rights prior to entry of the final decree. A determination of the hydrologic connection between the source of the groundwater diverted and the surface waters of Eagle Creek, or any other tributary of the Rio Hondo, was also deferred. Sub-File Order R. 203 further provides that the total amount of water, not to exceed 5,648 afy, was subject to proof of beneficial use to be filed with the State Engineer on or before November 1, 1990.

25. Wells H-1979-S, H-1979-S-2, H-1979-S-3 and H-1979-S-7 were permitted to supplement wells H-1979, H-1980, H-1981 and H-1982 by State Engineer actions of July 17, 1996, June 18, 1998, August 18, 1999 and April 23, 1998, respectively. Wells H-1979, H-1980, H-1981, H-1982 and supplemental wells H-1979-S, H-1979-S-2, H-1979-S-3 and H-1979-S-7 are referred to hereinafter, collectively, as the "North Fork wells".
26. The WRD has approved several Village requests for extension of time for filing of proof of beneficial use for Wells under File Nos. H-1979 et al., H-1980, H-1981 and H-1982. Proof of beneficial use is due on or before November 1, 2006.
27. The maximum annual combined diversion from the North Fork wells to date is 1,060.9 afy, which was produced in 1999. Average production from said wells between 1994 and 2002 was 748 afy.
28. Village hydrologists estimate the maximum average annual production of the North Fork wells to be approximately 1,200 afy, and based on that estimate, anticipate the amount of effluent credit that could be generated by the North Fork wells (hereinafter "North Fork effluent credit") at approximately 780 afy, which is equivalent to 65% of 1,200 afy.

29. The Village discharges its sewage effluent directly to the Rio Ruidoso downstream of its existing surface and groundwater points of diversion within the Rio Ruidoso drainage.
30. Discharge of the portion of the effluent that is attributable to diversions from the Village's North Fork wells augments the flow of the Rio Ruidoso at and below the point of discharge for the sewage treatment plant. If the source of water for the diversion of North Fork effluent credit is the Rio Ruidoso, the quantity of water available to existing water right holders downstream of the Village's effluent discharge point should not be less than the amount that would be available if the effluent attributable to North Fork groundwater diversions were not contributing to the flows of Rio Ruidoso.
31. The Village's effluent discharges to the Rio Ruidoso do not recharge the aquifer in the vicinity of any of the proposed points of diversion and an additional diversion that would impact the aquifer rather than the surface flows of the Rio Ruidoso would constitute a new appropriation of groundwater.
32. Calculations of WRD hydrologists reflect that the source of water for the diversion of North Fork effluent credit, under Application No. 3038-Enlarged-2, varies depending upon the proposed point of diversion (POD), as follows:

<u>POD</u>	<u>Rio Ruidoso</u>	<u>Groundwater</u>
0275	100%	0%
0275-A	100%	0%
H-272	71%	29%
H-272-S	97%	03%
H-272-S-7	13%	87%
H-272-S-8	31%	69%

Wells H-272-S-2 through H-272-S-6 were not considered viable producers for purposes of evaluating the hydrologic effects of the Application. Wells H-272-S-2 through H-272-S-6 are all further from the Rio Ruidoso than H-272-S-8 and the percentage of the diversion from those wells that could be considered as derived from the Rio Ruidoso would be less than that for H-272-S-8.

33. The Rio Ruidoso would be the source of water for diversion of North Fork effluent credits from 0275, 0275-A and H-272-S.
34. Diversion of North Fork effluent credits from 0275, 0275-A and H-272-S will not result in less water being available to existing water right holders downstream of the Village's effluent discharge point than the amount that would be available if the effluent attributable to North Fork groundwater diversions were not contributing to the flows of Rio Ruidoso.
35. Diversion of North Fork effluent credits from 0275, 0275-A and H-272-S will not adversely effect the exercise of existing water rights within the stretch of the Rio Ruidoso that lies between those points of diversion and the point of the discharge for the Village's sewage effluent, provided that the conditions concerning flow requirements noted in Findings 8 and 10 are met.
36. To the extent that North Fork effluent credits represent a contribution to the surface flows of the Rio Ruidoso that would not otherwise occur, diversion of North Fork effluent credit water from diversion points 0275, 0275-A and H-272-S will not impair existing surface or ground water rights provided that minimum flow conditions are met and maintained in the Rio Ruidoso.
37. Simulations by WRD hydrologists reflect that diversion of North Fork effluent credit water from points of diversion other than 0275, 0275-A and H-272-S, either alone or in combination with other proposed points of diversion, will impact and deplete the aquifer, causing wells of other ownership in the vicinity to be dewatered below their reported production zones within forty years.
38. Unmetered infiltration from the aquifer and inflow of water into the Village's municipal discharge lines does not represent a contribution to the surface flows of the Rio Ruidoso that is attributable to diversions of groundwater from the Village's North Fork wells.
39. A study done by Village consultant Molzen-Corbin, reflects that as of 1991, there was approximately 900,000 gallons per day (gpd) (equal to about 1,000 afy) of infiltration from the aquifer and inflow of water into the Village's sewage lines from sources other than permitted diversions.

40. The Village designed and implemented an action plan that included replacement and improvement of sewage lines to reduce infiltration and inflow to approximately 444 afy. The Village has replaced and improved approximately 72% of the sewage lines that were listed for action in its plan to reduce infiltration and inflow.
41. No analysis has been done to determine the current amount of infiltration and inflow into the Village's sewage effluent. Estimates of the amount range from 560 afy (Protestant's hydrologist Pete Balleau) to 10 to 12% of effluent outflow (Village consultant Dennis Brand).
42. Authorization of increased diversions from the Rio Ruidoso and wells in direct connection with the Rio Ruidoso, based upon North Fork effluent credit, should be conditioned upon the Village demonstrating to the satisfaction of the State Engineer that it can and will reduce the amount of unmetered infiltration and inflow into the Village's municipal discharge lines to the maximum extent practicable and that calculation of its sewage effluent credit will be done per methodology that accurately reflects the amount of sewage effluent attributable to diversion of water from the Village's North Fork wells.
43. The Village's current water supply operations and accounting methodology are complex. Although current permits contemplate daily measurement and monitoring of various data points, the WRD reports that the Village does not monitor the Hollywood gage daily or operate its wells on a simultaneous basis to account for minimum surface flow requirements at that gage.
44. Accurate daily measurement and monitoring of streamflow data, diversions and effluent discharge, and operation of the Village's water supply distribution system in accord with that data and applicable permit conditions, is essential to prevent impairment to existing water rights.
45. Authorization of increased diversions from the Rio Ruidoso and wells in direct connection with the Rio Ruidoso based upon North Fork effluent credit should be conditioned upon the Village demonstrating to the satisfaction of the State Engineer that it can and will operate and account for its water supply distribution system in accordance with applicable permit conditions and streamflow requirements

including, but not limited to, the requirement that the Hollywood gage be read and monitored on a daily basis and that related diversions be discontinued or curtailed simultaneously when gage readings indicate flows that are less than the required levels.

46. The Protestants testified as to concerns with decreasing water quality in the Rio Ruidoso downstream of the Village's point of effluent discharge and provided information as to the Village's compliance with effluent discharge limits for phosphorus under its National Pollutant Discharge Elimination System Permit (NPDES Permit).
47. Other state and federal agencies have primary jurisdiction concerning the quality of the Village's effluent discharge. Nonetheless, when a municipality seeks to obtain credit for its effluent discharge to a stream system and thereby divert an equivalent amount of fresh water from that stream system, public welfare concerns within the jurisdiction of the State Engineer are implicated.
48. Authorization of increased diversions from the Rio Ruidoso and wells in direct connection with the Rio Ruidoso based upon North Fork effluent credit should be conditioned upon the Village demonstrating to the satisfaction of the State Engineer that it can and will operate its waste water treatment plant in compliance with applicable state and federal water quality standards. Such requirement is not intended to and should not be interpreted as superceding any water quality standard established by either state or federal agencies.

## ORDER

**THEREFORE, IT IS HEREBY ORDERED** that Application No. H-272-S-9, H-272-S 11, 3038 and 3038-Accrue; and Application No. 3038-Enlgd-2; filed with the State Engineer by the Village of Ruidoso, are partially approved, subject to conditions, as follows:

**Permittee:** Village of Ruidoso

**Permit No.:** H-272-S-11, 3038 & 3038-Accrue

**Priority:** Application filed November 6, 2001

**Source of Water:** Surface waters of the Rio Ruidoso and Underground Water of the Hondo Basin in an amount equal to water discharged into the Rio Ruidoso as treated effluent that is attributable to surface and supplemental ground waters diverted from the Eagle Creek drainage basin.

**Point of Diversion:**

<u>File No.</u>	<u>Subdivision</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
H-272-S-11	NW ¼ NE ¼ NE ¼	25	11 South	13 East

**Amount of Water:** The diversion of water from well H-272-S-11, when combined with existing authorized points of diversion, shall not exceed the sewage effluent credit authorized under Permit 3038 and Permit 3038-Accrue.

**Purpose of Use:** Municipal

**Place of Use:** Service Area of the Village of Ruidoso water distribution system.

**Permit No.:** 3038-Enlarged-2

**Priority:** Application filed October 22, 1999 & November 26, 2002

**Source of Water:** Surface waters of the Rio Ruidoso and Underground Water of the Hondo Basin in an amount equal to water discharged into the Rio Ruidoso as treated effluent that is attributable to surface and supplemental ground waters diverted from the Eagle Creek drainage basin.

**Points of Diversion:**

<u>File No.</u>	<u>Subdivision</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
0275	NE ¼ SW ¼	19	11 South	13 E
0275-A	SW ¼ SW ¼	19	11 South	13 E
H-272-S	SE ¼ SW ¼ NE ¼	25	11 South	13 E

**Amount of Water:** The diversion of water under this permit shall not exceed the sewage effluent credit attributable to the diversion of water made from wells H-1979, H-1980, H-1981, and H-1982, and supplemental wells H-1979-S, H-1979-S-2, H-1979-S-3 and H-1979-S-7. In no event shall the diversion authorized under this permit exceed 1,000 acre-feet per year.

**Purpose of Use:** Municipal

**Place of Use:** Service Area of the Village of Ruidoso water distribution system.

**CONDITIONS OF APPROVAL**

1. Permit No. H-272-S-11, 3038 & 3038-Accrue and Permit No. 3038-Enlarged-2 shall not be exercised to the detriment of valid existing water rights or in a manner that is contrary to the conservation of water within the state or detrimental to the public welfare of the State of New Mexico.
2. The recovery of accrued sewage effluent credit under permit No. H-272-S-11, 3038 & 3038-Accrue, is authorized through each accounting period from November 1<sup>st</sup> through October 31<sup>st</sup>. Accrued credit that is not diverted by the end of each accounting year shall be forfeited. No accrual of effluent credit is authorized under Permit No. 3038-Enlgd-2.
3. The Permittee may only recover sewage effluent credit at such times when the following condition is met (all flow rates in cubic feet per second or other common unit):

$$Q_{ALC} + Q_{AR} + Q_{DR} \leq Q_{RR} - Q_{MF} \quad \text{where}$$

$Q_{ALC}$  = Rate of recovery of Grindstone leakage credit

$Q_{AR}$  = Rate of recovery of accrued sewage effluent credit

- QDR = Rate of recovery of instantaneous sewage effluent credit
- QRR = Rate of flow in the Rio Ruidoso at the Hollywood Gage
- QMF = Minimum rate of flow in the Rio Ruidoso at the Hollywood Gage
  - = 6.0 cubic feet per second from May through October
  - = 4.0 cubic feet per second from November through April

4. The Permittee shall account for all inflow into their sewage treatment plant by a method acceptable to the Office of the State Engineer. The daily sewage effluent credit shall be calculated as follows:

$$Re = (De/Dt) \times Rt \quad \text{where}$$

Re = Daily sewage effluent credit

Rt = Daily sewage effluent discharged from the Village of Ruidoso sewage treatment plant to the Rio Ruidoso that is attributable to the diversion from all permitted points of diversion authorized for use by the Village of Ruidoso that contribute flow to the treatment plant (not to include effluent discharge attributable to infiltration from groundwater, sewage inflow from the City of Ruidoso Downs, and other sources of inflow into the system other than permitted points of diversion)

De = Daily diversion of water to the municipal distribution system of the Village of Ruidoso from all points of diversion from which the diversion of water has been authorized for sewage effluent credit

Dt = Daily diversion of water to the municipal distribution system of the Village of Ruidoso

5. The accrued sewage effluent shall be calculated as follows:

$$RAC = RE - DDR \quad \text{where}$$

RAC = Daily accrued sewage effluent credit

RE = Daily sewage effluent credit (calculated per Condition of Approval 4)

DDR = Daily Diversion of instantaneous effluent credit

6. Records shall be submitted to the Office of the State Engineer on a monthly basis for the following:

A. Daily accrued sewage effluent credit



- B. Daily diversion of accrued effluent credit from each authorized point of diversion
- C. Daily diversion of instantaneous effluent credit from each authorized point of diversion
- D. Daily sewage effluent discharged from the Village of Ruidoso's sewage treatment plant into the Rio Ruidoso.
- E. Daily diversion of water to the municipal distribution system of the Village of Ruidoso
- F. Daily diversion of water to the municipal distribution system of the Village of Ruidoso that is attributable to the diversion from all permitted points of diversion authorized for use by the Village of Ruidoso that contribute flow to the treatment plant
- G. Daily diversion of water from wells H-1979, H-1980, H-1981, and H-1982, and supplemental wells H-1979-S, H-1979-S-2, H-1979-S-3, and H-1979-S-7 to the municipal distribution system of the Village of Ruidoso.
- H. Daily flow of Rio Ruidoso at the Hollywood Gage, including maximum and minimum recorded daily flows.

The daily records required above shall be on a form acceptable to the State Engineer and shall be submitted on a monthly basis to the Office of the State Engineer in Roswell by the 10<sup>th</sup> day of the following month. The permittee shall submit an annual summary on or before November 15<sup>th</sup> for the previous accounting year listing the monthly and annual totals for the daily values required under parts A through H above. The annual summary shall be on a form acceptable to the State Engineer.

- 7. Prior to any diversion of North Fork effluent credit water under Permit No. 3038-Enlarged-2, the Permittee shall submit to the State Engineer a Water Supply Operations and Accounting Plan demonstrating to the satisfaction of, and subject to the approval of the State Engineer, that it can and will operate and account for its water supply distribution system in accordance with applicable permit conditions and streamflow requirements, and in a manner that ensures, to the maximum extent

practicable, that the sewage effluent, upon which said credit is based, is attributable to diversion of water from its North Fork wells and is in compliance with state and federal water quality standards. The Water Supply Operations and Accounting Plan must, at a minimum, include the following components:

- A. A description of the methodology and forms to be used to ensure accurate and timely daily monitoring, measurement and recording of streamflow data, diversions and effluent discharges as required by Condition of Approval 6.
- B. A description of the methodology and forms to be used to ensure accurate and timely monthly and annual reporting and accounting as required by Condition of Approval 6.
- C. A report and analysis describing the current amount of infiltration and inflow into the Village's sewage lines from sources other than permitted diversions and
  - i) a description of actions to be taken by the Village of Ruidoso to reduce infiltration and inflow into the Village's sewage lines to the maximum extent practicable.
  - ii) a method of accounting for the sewage effluent discharged from the Village of Ruidoso's sewage treatment plant to the Rio Ruidoso that is attributable to diversions from all permitted points of diversion authorized for use by the Village that contribute flow to the treatment plant that does not include effluent discharge attributable to storm water, sewage inflow from the town of Ruidoso Downs, and any other inflow into the system not derived from authorized points of diversion of the Village of Ruidoso.
- D. A description of the actions that will be taken by the Village to ensure that the effluent for which it receives credit under this permit is in compliance with state and federal water quality standards.
- E. A curtailment plan describing actions to be taken by the Village in the event that applicable streamflow requirements or other permit conditions are not met.

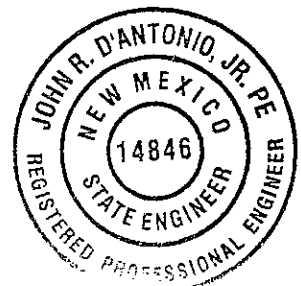
8. Prior to any diversion of water under Permit Nos. H-272-S-11, 3038 & 3038-Accrue, and 3038-Enlarged-2, the Village shall demonstrate, to the satisfaction of the State Engineer, that the streamflow gages, meters and measuring devices required by and related to the conditions of approval for said permits are of a kind and quality acceptable to the State Engineer and that said devices provide, and the Village obtains and utilizes, streamflow and diversion data from the devices on either a continuous basis or at intervals of sufficient frequency to ensure that operation of the Village's water supply distribution system is consistent with applicable minimum streamflow requirements and other conditions of approval under its permits.
9. The maximum diversion from Well H-272-S-11 shall not exceed 1,000 acre-feet per accounting year.
10. Proof of Application of Water to Beneficial Use under File Nos. H-1979 et al., H-1980, H-1981 and H-1982 must and shall be filed with the Office of the State Engineer on or before November 1, 2006.
11. The Permittee shall utilize the highest and best technology available and economically feasible to ensure conservation of water to the maximum extent practical.
12. The State Engineer shall retain jurisdiction over these permits for the purpose of ensuring that exercise of the permits do not violate the foregoing conditions.

Respectfully submitted

  
Victor Kovach  
Hearing Examiner

I ACCEPT AND ADOPT THE REPORT AND RECOMMENDATION OF THE HEARING EXAMINER THIS 21<sup>st</sup> DAY OF June, 2006.

  
JOHN R. D'ANTONIO, JR., P.E.  
NEW MEXICO STATE ENGINEER



**ALL PARTIES ENTITLED TO NOTICE**

**HU No. 00-041 and 02-069  
CONSOLIDATED**

I certify that a copy of the foregoing Report and Recommendation of the Hearing Examiner was mailed to the following parties on the 22nd day of June 2006.

  
F. Eileen Serna, Administrator

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